

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 13, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:990D-139  
OAHU

RESUBMITTAL - Amend Prior Board Action of June 9, 2005 (Item D-17), Issuance of Direct Lease to Windward Retreat Center for Religious, Social (Community), and Charitable Eleemosynary Purposes, Kaaawa, Koolauloa, Oahu, Tax Map Keys (1) 5-1-14:por. 47 and 5-1-11:por. 55

BACKGROUND:

At its June 9, 2005 meeting, under agenda Item D-17, the Land Board approved to rescind its prior approval of December 15, 1995 and issue a direct lease to Windward Retreat Center for religious, social (community), and charitable eleemosynary purposes. The Board further amended its approval by approving the lease conditions and stating that the rent shall not be more than \$500 per month. Staff was to bring this back to the Board to decide on the amount annual rent to assess the Applicant.

Subsequently, the Applicants have decided that the rent of \$500 per month (or \$6,000 per year) is acceptable.

Staff requested the Attorney General's office to prepare the new lease. The Attorney General's office has informed us there are several items that need to be approved by the Land Board. First, confirm that the rent shall be \$500 per month or \$6,000 per year. Second, Recommendation N states: Change the breach provision of non-financial items. The cure period shall be thirty (30) days. This lease provision conflicts with Section 171-20, Hawaii Revised Statutes. The cure period for non-financial items to be within sixty (60) days. This needs to be deleted in its entirety.

Subsequently, at its June 9, 2006 meeting, under agenda Item D-13, staff requested the Land Board to defer this matter.

OUTSTANDING ISSUES AND ANALYSIS:

As background, the Board of Land and Natural Resources (Board) typically issues leases to private individuals and entities via public auction. The new rent at reopening is established at fair market rental value by

an appraisal. If the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may issue the lease, at a nominal rent, by direct negotiation. The statute providing the Board this authority is as follows:

**§171-43.1 Lease to eleemosynary organizations.** The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

Therefore, when considering lease dispositions to eleemosynary (charitable) organizations, the Board may issue the lease by public auction at fair market rent, or by direct negotiation at an amount below fair market rental (i.e., nominal rent). On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for Lease be no less than \$480 per year. Land Division generally issues Leases at fair market rental value as determined by an appraiser or via public auction. Staff believes "nominal rent" under Section 171-43.1, Hawaii Revised Statutes ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480 per year.

Applicant's have no objections to the \$6,000 per year rent as determined by the Land Board at its meeting of June 9, 2005. Staff notes that the Applicant's qualify for reconsideration by the Land Board as a non-profit.

To comply with instructions from the Attorney General's office, staff is requesting the Board to delete Recommendation N (Change the breach provision of non-financial items. The cure period shall be thirty days.)

As it is written, this provision conflicts with Section 171-20, Hawaii Revised Statutes. The statutes provide a cure period for non-financial items to be within sixty (60) days.

Applicant completed an environmental assessment and received a negative declaration published in the OEQC Bulletin on July 8, 1993. All that remains outstanding is the Special Management Area permit and Conditional Use Permit. Currently, the process for obtaining City and County of Honolulu permits and approvals is very slow (backlogged). The Applicant would have difficulty in complying with our Recommendation B (Obtain all required City permits and approvals, including but not limited to, Special Management Area (SMA) permit, Conditional Use Permit within sixty

(60) days.) Based on this, staff is recommending this be amended by deleting the word 'Obtain' and replacing it with 'Shall start'. Furthermore, staff believes the Attorney General should put additional wording into the new lease in the event the Applicant is unsuccessful in obtaining a Special Management Area Permit and/or a Conditional Use Permit from the City and County of Honolulu. The new lease shall be automatically terminated without the requirement of a Land Board hearing.

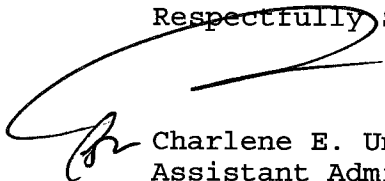
COMMENTS:

Staff is attaching as part of this submittal Mr. Jim Anthony, Ph.D. request that Windward Retreat Center for a direct lease should be denied. Exhibit D.

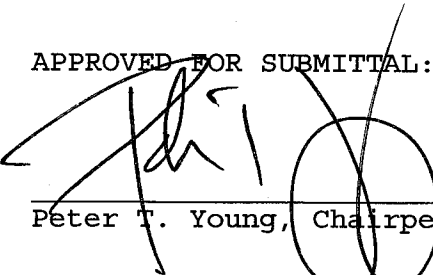
RECOMMENDATION: That the Board

- A. Amend its prior action of June 9, 2005, under Item D-17, by:
1. The annual rental shall be \$480;
  2. Delete Recommendation N;
  3. Amend Recommendation B by deleting the word Obtain and replacing it with Shall start. Add: In the event the Applicant is unsuccessful in obtaining a Special Management Area Permit and/or a Conditional Use Permit from the City and County of Honolulu. The lease shall be automatically terminated without a Land Board hearing; and
  4. All terms and conditions listed in its June 9, 2005 approval to remain the same.

Respectfully Submitted,

  
Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson

**AMENDED**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

June 9, 2005

**EXHIBIT "A"**

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 990D-139

OAHU

Resubmittal - Rescind Prior Board Action of December 15, 1995, (Item F-10) and Issuance of Direct Lease to Windward Retreat Center for Religious, Social (Community), and Charitable Eleemosynary Purposes, Kaaawa, Koolauloa, Oahu, Tax Map Key: (1) 5-1-14:por. 47 and 5-1-11:por. 55

APPLICANT:

Windward Retreat Center, whose business and mailing address is 51-019 Lau Place, Kaaawa, Hawaii 96730.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands at Kaaawa, Koolauloa, Oahu, identified by Tax Map Key: (1) 5-1-14:47, as shown on the attached map labeled Exhibit A.

AREA:

Approximately 3.670 acres, more or less, to be confirmed by DAGS Survey.

ZONING:

State Land Use District: Urban  
City & County of Honolulu LUO: R-5

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO X

CURRENT USE STATUS:

Vacant and unencumbered.

*As Amended*  
APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON *MC*

ITEM D-17

**EXHIBIT "A"**

CHARACTER OF USE:

Retreat center for religious, social (community), and charitable eleemosynary purposes.

LEASE TERM:

Thirty-five (35) years

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

Fair market annual rent to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the end of the 10<sup>th</sup> and 20<sup>th</sup> years of the lease term, by staff or independent appraisal.

MINIMUM IMPROVEMENTS:

Within 5 years from the commencement date of the lease, the Lessee shall have completed the construction of improvements having a value of not less than \$284,400. Said improvements shall be in accordance with plans submitted to the Chairperson for approval prior to their construction.

IMPROVEMENT BOND:

\$175,617.00

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the subject project was published in the OEQC's Environmental Notice on July 8, 1993 with a finding of no significant impact (FONSI).

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>x</u>	NO	<u>    </u>
Registered business name confirmed:	YES	<u>x</u>	NO	<u>    </u>
Applicant in good standing confirmed:	YES	<u>x</u>	NO	<u>    </u>

EXHIBIT "A"

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine initial rent and
- 2) Pay for the costs of public notice pursuant to section 171-16.

BACKGROUND:

This submittal was deferred by the Land Board at its meeting of August 13, 2004, under agenda item D-8. Applicants requested a deferral.

REMARKS:

On November 23, 2004, Applicants submitted a list of concerns that we have attached as Exhibit B and they are:

Item 2, the annual rent: Staff explained to the Applicant that the past practice was in error. As previously stated: "The Department of the Attorney General has corrected our Department and stated that it is improper to transfer to OHA 100% of the 20% of fair market rent we are collecting." Furthermore, to eliminate favoritism and lack of expertise by our staff, our submittals will now recommend fair market rent and the Board, who has the authority, can determine what the annual rent should be for the non-profit group. In this case, Applicant is requesting that the Board consider that annual rent should stay at 25% of fair market value or the rent should be made nominal. We defer to the Land Board on this.

Item 4, the minimum improvement amount: A revised Business Plan (Exhibit C) has been submitted. The construction cost as of December 19, 2004 is estimated to be \$284,400 for 2 structures totaling 2,844 square feet. Therefore, staff has changed the minimum improvement amount previously from \$775,000 to \$427,000 to now, \$284,400. Staff has corrected our submittal.

Item 5, the improvement bond amount: Our practice is to obtain a bond in the amount of the minimum improvements, not two times the annual rental. The two times the annual rental is for a performance bond. Applicants revised business plan reflects using labor donated by members and materials donated by the construction industry in the amount of \$108,783. Approximately \$175,617 of the construction will be done by a licensed contractor. Applicant is requesting the improvement bond amount reflect \$175,617. Staff has corrected our submittal.

Item 6, not including the road remnants into the lease: Applicant is requesting the remnants not be subdivided out from the larger parcel. Currently, portions of roads (or remnants) are used by the general public as a road and are part of the The Kaaawa Beach Owners Association roadways. The Association has expressed interest in acquiring these portions of road. Also, since August 2004, all of the



abutting property owners have expressed interest in purchasing portions of the remnants adjacent to their lots. Mr. John Morgan, Kualoa Ranch Inc. has indicated he has contacted a licensed land surveyor to complete the subdivision and consolidation. The owners want to complete the acquisition. Applicant is proposing an exception be made to allow the State to withdraw these road remnants and sell the road remnants to the abutting property owners in the future. Currently, all State leases have a withdrawal provision - "The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease." Staff has corrected our submittal.

Item 8, DCCA verification: That matter has been resolved with DCCA. Staff has corrected our submittal.

Items 11, 12, and 13, cover the requirement to complete survey map and description, City permits and approvals, and subsurface archaeological survey prior to execution of the new lease: Applicant is requesting the lease be executed before these items are completed. Applicant has indicated they will obtain these approvals, but will not expend any more monies unless they have assurance they will get the lease from the State. Staff has corrected our submittal. Additionally, staff recommends the breach provision in the new lease be modified for breach of non-financial items; the cure period shall be thirty (30) days instead of sixty (60) days.

Item 17, the lease condition not to use Hiwahiwa Road as a right-of-way or driveway for ingress or egress: Applicant has submitted letter dated December 11, 2004 from Ms. DeeDee Letts, President of the Kaaawa Community Association indicating Humalani Road would be the ingress and egress for the retreat center and Hiwahiwa Road would be the access for caretaker residence (Exhibit D). Staff has corrected our submittal.

Item 18, additional lease conditions: Applicant is requesting the lease conditions approved by the Kaaawa Community Association January 1994 (see Exhibit E) be incorporated into the new lease. For Items i and j, staff contacted the City if such requirement is necessary. The City is concerned that establishing setback requirements in the lease

June 9, 2005

EXHIBIT "A"

may conflict with the City's setback ordinances. For Item 1, staff discussed this with State and Oahu Civil Defense and there is no such certification program. Staff has corrected our submittal.

The Board of Land and Natural Resources (Board) typically issues leases to private individuals and entities via public auction. The rent is established as fair market rent by appraisal. When a rental reopening occurs during the term of the lease an appraiser sets the new rent at fair market value.

However, when the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may lease, at a nominal rent, by direct negotiation. The statute that addresses this option of the Board is summarized as follows:

**§171-43.1 Lease to eleemosynary organizations.** The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

Therefore, when considering lease dispositions to eleemosynary (charitable) organizations, the Board has the option to dispose of via public auction at fair market rent or by direct negotiation at nominal rent.

RECOMMENDATION: That the Board:

1. Rescind its prior action of December 15, 1995, under agenda item F-10.
2. Determine that the lease rent for Windward Retreat Center shall be:

Fair market rent

Or

Nominal rent.

3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to the Windward Retreat Center covering the subject area under the terms and conditions cited above,



June 9, 2005

EXHIBIT "A"

which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current non-profit lease document form, as may be amended from time to time;
- B. Obtain all required City permits and approvals, including but not limited to, Special Management Area (SMA) permit, Conditional Use Permit within sixty (60) days.
- C. Submit subsurface archaeological survey by a qualified archaeologist subject to review and approval by the State Historic Preservation Division (SHPD); provided that if historic sites are found, a mitigation plan shall be developed and implemented to the satisfaction of SHPD within sixty (60) days.
- D. There shall be no more than four (4) retreat buildings and an entry building.
- E. There shall be no more than ninety (90) center participants on the premises at any one time.
- F. Ingress and egress to the center shall be from Humilani Street including for emergency purposes. Access for the caretaker cottage shall be from Hiwahiwa Street by a single driveway.
- G. Users of the premises shall be community groups, religious groups, non-profit organizations, government agencies, and people associated with such groups, organizations and agencies.
- H. The center shall not be used for profit purposes.
- I. The center shall not be used for commercial purposes.
- J. Activities at the center shall be of a quiet nature. Weddings, birthday parties, luaus or other similar events shall not be allowed on the premises.
- K. The Kaaawa community individuals and organizations shall be allowed to meet at the center at no charge, as approved by the program committee of the center. The program committee shall include the residents from Kaaawa.
- L. No intrusive bright outdoor lighting shall be employed.
- M. Change the withdrawal provision to allow the State to




June 9, 2005

withdraw the road remnants and sell the road remnants to the abutting property owners.

- N. Change the breach provision of non-financial items. The cure period shall be thirty (30) days.
- O. Review and approval by the Department of the Attorney General.
- P. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Charlene E. Unoki".

 Charlene E. Unoki  
Assistant Administrator

APPROVED FOR SUBMITTAL:

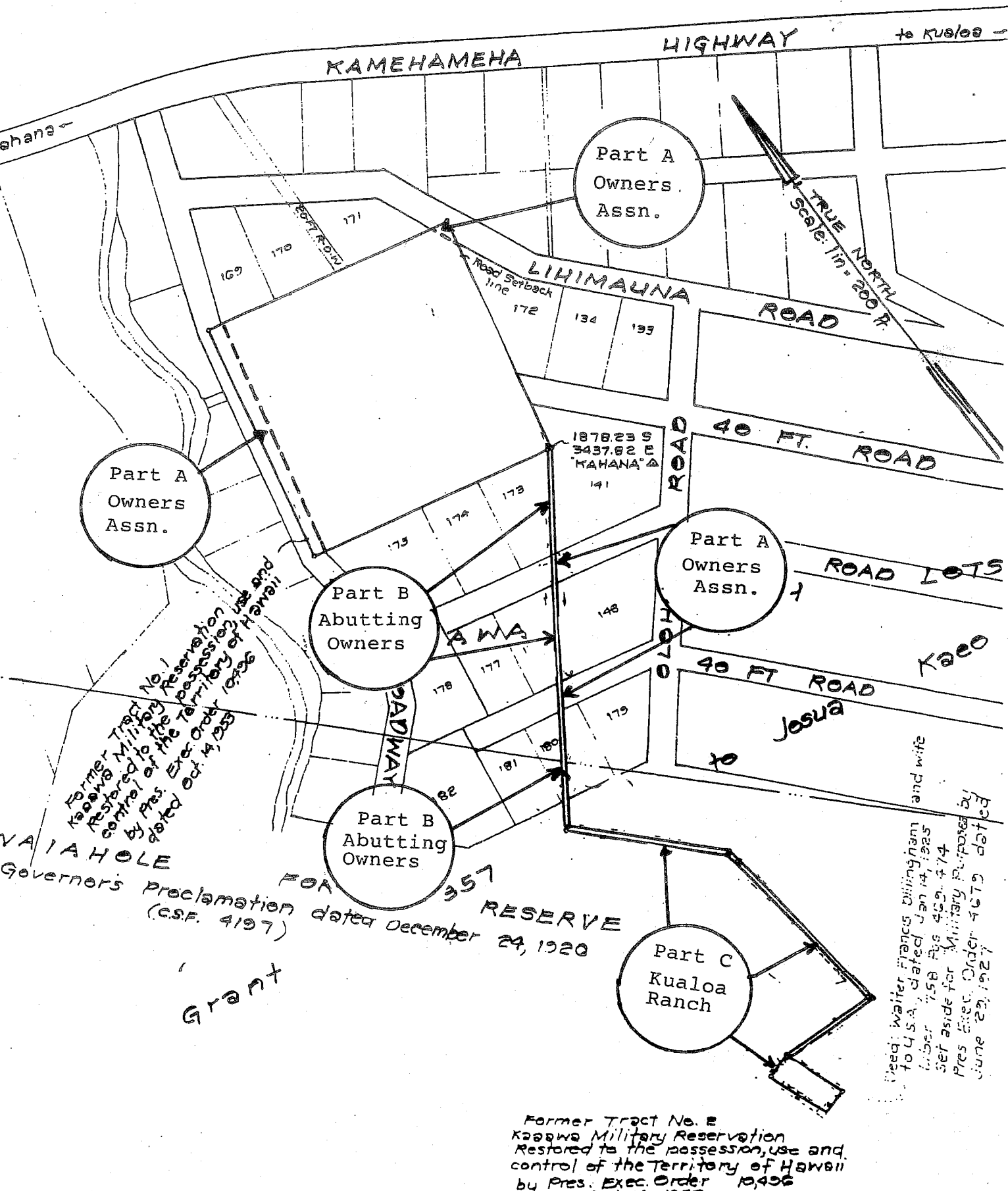
A large, stylized handwritten signature in cursive script, likely belonging to Peter T. Young.

Peter T. Young, Chairperson

Approved as amended. The Board amended the submittal by approving the lease conditions and stating that the rent shall not be more than \$500 per month. Staff is to bring this back for Board decision on what the annual rent should be.



EXHIBIT "A"



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 13, 2005

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Statewide

Minimum Rent Policy for New Dispositions

BACKGROUND

Pursuant to discussion among staff, we feel there is a need to balance staff time and costs against the returns from Land Division dispositions. The State should receive a fair return on the land while maintaining its duty under the public land trust.

The current lowest rent for leases and revocable permits is \$156 per year or \$13 per month. Staff cannot locate any Board approval regarding the definition or the origin of the "minimum rent". Staff believes that in the past we just administratively adopted the term.

A consulting report by local real estate appraisal and consulting firm Medusky & Co. was completed in April 2004 which addressed the state's proposed formula for calculating one-time payments for term shoreline encroachment easements. The report recommended that for small encroachments where the rent payment, when calculated using the recommended formula is less than \$500, a minimum rent be charged of \$500. The \$500 amount was derived via other small easement considerations researched from the market. This fee was considered reasonable in part for inconvenience and to defray administrative costs. The Board has adopted the \$500 minimum rent for shoreline encroachments.

RESEARCH

Staff has conducted some research into overhead and administrative costs necessary to manage new dispositions and reopenings. Other landowners were surveyed such as Campbell Estate and Kamehameha Schools Bishop Estate. Campbell does not have a universal minimum rent but every year they set their rent based on the current conditions and evaluates all new deals based on that. Calls to Kamehameha Schools were not returned. Department of Transportation (DOT) and Department of Agriculture were also surveyed as to their policy regarding minimum rent. Only DOT charges a minimum rent of \$20 per month for rental of storage areas in the harbor areas.

APPROVED BY THE BOARD OF  
LAND AND NATURAL RESOURCES  
AT ITS MEETING HELD ON

May 13, 2005

EXHIBIT "B"

ITEM D-19

Dispositions including lease, easement, license and revocable permit involve rental payments on a recurring basis or lump sum. The proposed guideline as explained below will cover these disposition but not the fee conveyances, e.g. sale of remnant or reclaimed land.

Further, staff notes that land dispositions involve multiple offices, e.g. DLNR, DAGS, AG. Staff would point out that the minimum rent recommended below only covers the staff cost of DLNR as the other agencies are only involved at the application stage. Once the disposition is consummated, DLNR is the only agency that manages the disposition and incurs staff costs. While we want to recoup part of the staff cost, staff feels that the figure has to be realistic and affordable by our tenants.

Also, time consumed for different disposition could be varied. Staff discussed the time with other districts and feels that an 8-manhour period is appropriate as the basis of this analysis.

#### EVALUATION:

Eight hours at a rate of \$18.91 (starting hourly rate of a Land Agent IV) is \$151.28. However, after the initial year, staff time expended on a disposition, which is in compliance with the terms and conditions, would be reduced substantially. Therefore, staff recommends a 75% discount from the total staff costs to account for the ongoing staff time on managing the disposition. Staff recommends \$40 per month or \$480 per year ( $\$151.28 \times 25\% = \$37.82$ , rounded to \$40 per month) as the minimum rent for all dispositions involving recurring rental payment.

Staff feels the minimum one-time payment (\$500) adopted by the Board for shoreline encroachment could be used as a guideline for other term or perpetual easements as well. The report by Medusky based his findings on market data, which reviewed other minimum rent payments for a variety of other easements. The report concluded a minimum payment for small encroachment easements of \$500. Land Division has been recommending one-time payment for other types of easements (e.g. access, utility easements). Easement valuations are largely determined via independent appraisal. However, in the event the appraised value for the term or perpetual easement is below \$500, then Staff recommends a \$500 charge to cover administrative overhead. Staff feels this amount should be set as a minimum for all dispositions involving one-time payment.

#### RECOMMENDATION

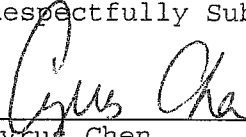
That the Board approves the above policy by requiring:

- A. All new dispositions by Land Division shall be subject to a minimum rent of \$40 per month, \$480 per year or \$500 (one-time payment) depending on the payment term.
- B. Staff shall bring any cases that require deviation from the above policy to the Board for approval.

**EXHIBIT "B"**

May 13, 2005

Respectfully Submitted,

  
\_\_\_\_\_  
Cyrus Chen  
Appraisal Manager

APPROVED FOR SUBMITTAL

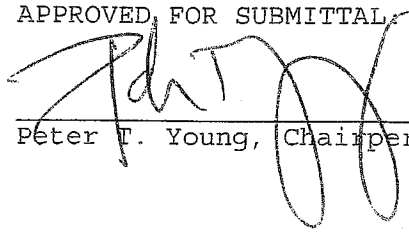
  
\_\_\_\_\_  
Peter T. Young, Chairperson

EXHIBIT "B"

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: JAN 02 2001

WINDWARD RETREAT CENTER  
C/O BOB STAUFFER  
51-019 LAU PLACE  
KAAAWA, HI 96730

Employer Identification Number:  
99-0303221  
DLN:  
17053281732040  
Contact Person:  
LYNN A BRINKLEY ID# 31435  
Contact Telephone Number:  
(877) 829-5500  
Our Letter Dated:  
June 12, 1993  
Addendum Applies:  
No

Dear Applicant:

This modifies our letter of the above date in which we stated that you would be treated as an organization that is not a private foundation until the expiration of your advance ruling period.

Your exempt status under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) is still in effect. Based on the information you submitted, we have determined that you are not a private foundation within the meaning of section 509(a) of the Code because you are an organization of the type described in section 509(a)(1) and 170(b)(1)(A)(vi).

Grantors and contributors may rely on this determination unless the Internal Revenue Service publishes notice to the contrary. However, if you lose your section 509(a)(1) status, a grantor or contributor may not rely on this determination if he or she was in part responsible for, or was aware of, the act or failure to act, or the substantial or material change on the part of the organization that resulted in your loss of such status, or if he or she acquired knowledge that the Internal Revenue Service had given notice that you would no longer be classified as a section 509(a)(1) organization.

You are required to make your annual information return, Form 990 or Form 990-EZ, available for public inspection for three years after the later of the due date of the return or the date the return is filed. You are also required to make available for public inspection your exemption application, any supporting documents, and your exemption letter. Copies of these documents are also required to be provided to any individual upon written or in person request without charge other than reasonable fees for copying and postage. You may fulfill this requirement by placing these documents on the Internet. Penalties may be imposed for failure to comply with these requirements. Additional information is available in Publication 557, Tax-Exempt Status for Your Organization, or you may call our toll free number shown above.

If we have indicated in the heading of this letter that an addendum applies, the addendum enclosed is an integral part of this letter.

Letter 1050 (DO/CG)

**EXHIBIT "C"**



WINDWARD RETREAT CENTER

Because this letter could help resolve any questions about your private foundation status, please keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

A handwritten signature in cursive script that reads "Steven T. Miller".

Steven T. Miller  
Director, Exempt Organizations

Letter 1050 (DO/CG)

**EXHIBIT "C"**

P.O. Box 629  
Ka'a'awa, Hawaii 96730

September 12, 2006

**BY FAX TRANSMISSION (587-0455) and by U.S. Mail**

Ms. Charlene Unoki  
Assistant Administrator  
Land Division  
DLNR  
P.O. Box 621  
HONOLULU, HAWAII 96809

Dear Ms. Unoki

re: Your Draft Submittal dated August 24, 2006—Windward  
Retreat Center Application for State owned land in Ka'a'awa:  
TMKs (1) 5-1-14: por. 47 and 5-1-11: por. 55

I have now reviewed in detail the draft submittal you sent Mr. Geldermann and me under cover of your letter dated August 24. I confirm what I told you on the phone yesterday afternoon when we discussed the aforementioned subject. **Your draft submittal, with particular reference to its substantive provisions, is totally unacceptable.** As the draft submittal stands it is at substantial variance with what is in your own files and, in my view, it falsifies the official record and is designed to mislead the Board. It is clear—and I have this on good authority—that you are under pressure from Peter Young and the Governor's office, to recommend approval of this application irrespective of its merits. Peter Young, as you know, a member of the Governor's Cabinet and your boss, is himself under pressure from the Governor's office to get this application for State land approved—apparently by whatever means necessary including **ordering** you to deal with this matter on bases other than merit. And you have succumbed, apparently, to Peter Young's pressure so it seems to me. Peter has become a political partisan in this matter and, in my view, he ought to recuse himself from any involvement in decision making when this matter comes before the Board.

**EXHIBIT "D"**

RECEIVED  
LAND DIVISION  
2006 SEP 13 A 10:32  
DEPT. OF LAND & NATURAL RESOURCES  
STATE OF HAWAII

With respect to the draft submittal as it stands you have done a sloppy job that is confused, confusing and both arbitrary and capricious. Despite my repeated requests to you to be transparent with the Board with respect to the material in your files you have not done so. You have made no determination as to whether the Windward Retreat Center ('WRC') is a bona fide non-profit, what its financial status is and what its ability is to finance the project its spokesmen say they have in mind. You have not asked for any plans on paper for what the WRC says it will do with the land in question should a lease be granted to it. You have not asked for any track record information on what precisely, if anything, the WRC has done since it was established despite the fact that I have told you on several occasions that the WRC is an 'empty shell', a shady, shift organization with no track record. The standards (if standards they can be called) you apply to the WRC application are completely at variance with standards used by kindred agencies (and even your own!) under the DLNR umbrella with respect to similar applications for State land.

Among a wide range of disclosures you ought to make for the Board's information is the position taken by Kathryn Inouye on this matter. In the same vein Dee Dee Mamiya's position on this matter ought also be disclosed to the Board in your submittal. Your submittal ought to truthfully and fully disclose to the Board at least in summary, bullet point format, a chronological check sheet of what has transpired over the last ten years with respect to the WRC application. To the extent that such information is not disclosed to the Board in your draft submittal, as it stands, it is designed to deliberately keep the Board in the dark. Both the Board and the public at large are entitled to the truth, to transparency, over a matter such as this. Your draft submittal fails to meet these requirements of which you are well aware.

It is particularly troubling, for example, that you do not disclose to the Board that there are at least two petitions signed by residents of Ka'a'awa opposing the WRC proposed project. Both petitions are in your files. You do not disclose, either, that as recently as when this matter was last on the Board's agenda this past June that there was a letter from the President of the Ka'a'awa Community Association raising important questions about this project.

Finally, this point: if Linda Smith of the Governor's office, the author of the letter apparently accusing the Board of stalling over this matter and pretty much using her position in the Governor's office as a perch from which to order its approval, wants to make submissions to the Board let her do so in the daylight of the common forum—before the Board in full public view so that whatever she might have to say can be evaluated and rebutted—on its merits. As long as Linda Smith lurks in the corridors of power and seeks just to play mini puppet master her attempt to manipulate the Board ought to be ignored. And Peter Young ought to cease and desist from allowing himself to be pressured into doing what he must know is not the right thing.

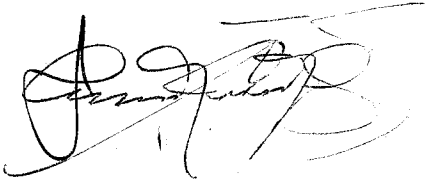
I have, as I told you on the phone, asked both the Ombudsman's office and the Ethics Commission to inquire into the circumstances surrounding this issue.

**EXHIBIT "D"**

It is high time to bring some honor and decency and impartiality to this matter. The faulty premises and completely inadequate disclosures in your draft submittal are unworthy of Board consideration. But if Peter foolishly insists on signing off on the submittal as it stands and if you abandon all pretense at impartiality and send the submittal in the form in which you have sent it to me for Peter's signature then we will have to battle it out before the Board. The only honorable course for you to take is to completely re-write the submittal, fully disclose what's in your files and what representations I have made here, and recommend denial of this application. If Peter does not wish to sign off on a submittal that carefully and truthfully draws on what is in the record with a staff position recommending denial then that becomes Peter's problem. I should make it quite clear to you that everything you have told me about this issue is, as far as I am concerned, information provided to me on the record and I intend to use any and all of it when I testify before the Board.

Aloha

Jim Anthony, Ph.D.

A handwritten signature in black ink, appearing to be "Jim Anthony", written over a horizontal line.

cc: Mr. William Geldermann

unoki.091206

EXHIBIT "D"

P.O. Box 629, Ka'a'awa, Hawaii 96730

RECEIVED

December 13, 2005

05 DEC 15 A8 05

The Chair

Ka'a'awa Community Association

at its public meeting to be held at Ka'a'awa Elementary School 12/13/05 at 7 p.m.

DEPT. OF LAND  
& NATURAL RESOURCES  
STATE OF HAWAII

**FOR URGENT HAND DELIVERY**

Mr. Chairman

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STATE OF HAWAII

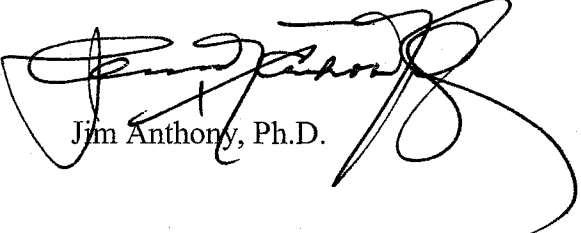
I understand that there have been behind the scenes discussions during the course of the day about the proposed Windward Retreat Center ('WRC') matter listed as an item for public discussion on this evening's agenda. Just in case members of the public, residents of Ka'a'awa in particular, are prevented from speaking to this issue this evening I am setting out in summary, on, and for the record the core of my substantive objections to the granting of any lease of the land abutting Huamalani Street to the applicant trading as 'Windward Retreat Center' for the following reasons:

1. The WRC project as described so far has no benefit to the Ka'a'awa community or, indeed, any of the neighboring communities along the Windward Coast (Ko'olauloa in particular);
2. DLNR acted foolishly, and in indecent haste, in not advertising the availability of this parcel of land to the larger community of non-profits before it took the most recent steps in the direction of possibly granting a lease to WRC;
3. DLNR did not only act in indecent haste in this matter but it also acted in response to political pressure and interference from the Governor's office—facts which were never, as far as I know, disclosed to the Board of the Department of Land and Natural Resources either before or during its deliberations on June 9, 2005;
4. At least one senior member of the staff of the Lands Division, where the submittal for Land Board review originated, was quite strongly opposed to the WRC project on several grounds but was prevented by political pressure from stating those objections openly and clearly for Board information;
5. The people who live in Ka'a'awa and their neighbors within the moku of Ko'olauloa have not been fully and accurately informed about all aspects of this project and the historical terrain from which it comes and in which it is embedded. In short, there has been little in the way of transparency in terms of the disclosure of relevant information to which all interested members of the public are entitled and which the principals associated with this project are obliged to produce;

**EXHIBIT "2"**

6. There is at least an appearance of cronyism at work here—a clique of resident activists seem to be in cahoots with a clique of their friends to make commitments that endorse this project in the name of the community without meeting any of the commonly acceptable standards of full disclosure to the community at large (both those who live in Ka'a'awa and their neighbors who live in Ko'olauloa);
7. **Other interested not for profit parties which might have a legitimate interest in the land in question have not been given an opportunity to bid for it. I have recently opened up preliminary inquiries of an organization that has for many years received Federal funding and has a long and distinguished track record of community service. That organization could be interested in acquiring this land and would put it to a use that would actually serve present and future generations of people who live in Ka'a'awa and Ko'olauloa. There may well be other similar organizations. WRC has disclosed no information at all of any track record of community service. There may well be a cloud even over WRC's 501 c 3 status which the Lands Division, apparently, never examined.**
8. The community is entitled to see WRC's Articles of Incorporation and its by-laws but even these quite rudimentary documents have never, to my knowledge, been made available. I make a special point of this because WRC is an applicant for a piece of public land—it therefore has an obligation to disclose important parts of its profile rather than rely on the argument that these documents are in the public domain and anyone can get them.
9. WRC is relying on a July 8, **1993** FONSI (Finding of No Significant Impact) after it filed an Environmental Assessment. **1993 is twelve years ago!** Is an EA that old still worth anything? We don't know and we should know.
10. More than 50 residents of Ka'a'awa have signed a petition **opposing** WRC's attempted land grab. That is reason enough for all of us not to allow ourselves to be rushed to judgment on this matter.

In my view the case **against** WRC's attempted land grab is so strong that we should tell WRC what the Land Board told them in December **1995**, ten years ago!—go away, your project does not warrant our support.



Jim Anthony, Ph.D.

cc Chair, Department of Land & Natural Resources  
( Staff, Lands Division, DLNR

Community people: Ka'a'awa, Kahana, Punalu'u, Kaluanui, Hau'ula, La'ie, Malaekahana, Kahuku

wrclandgrab.121305

EXHIBIT "D"